IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 33288 of 2006(K)

PETITIONER:

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1. K.P.KRISHNANKUTTY,
   JUNIOR CLERK, NEDIYANGA SERVICE CO-OPERATIVE
   BANK LTD., SREEKANDAPURAM BRANCH,
   (P.O.) SREEKANDAPURAM.

2. K.P.GANGADHARAN,
   TYPIST, NEDIYANGA SERVICE CO-OPERATIVE BANK LTD.,
   SREEKANDAPURAM BRANCH, (P.O.) SREEKANDAPURAM.

BY ADV. SRI.V.C.JAMES
SRI.GEORGE MECHERIL

RESPONDENTS:

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1. THE JOINT REGISTRAR OF CO-OPERATIVE
   SOCIETIES, KANNUR.

2. THE NEDIYANGA SERVICE CO-OPERATIVE BANK
   LIMITED, CHEMPANTHOTTY,
   REPRESENTED BY ITS SECRETARY.

BY SENIOR GOVERNMENT PLEADER SRI.P.N. SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

W.P.(C). 33288/2006

Dated this the 15th day of December, 2006

JUDGMENT

The writ petitioners are the employees of the second respondent, bank. There were allegations of mis-appropriation and mis-conduct, during their service. They were proceeded against, as per the service rules. The allegations made against them were found to be proved. Therefore, the punishment, as prescribed under the Kerala Co-operative Societies Rules, 1969, in short 'the Rules', had been imposed. However, a vigilance case had been registered against three persons, including the writ petitioners herein. The Vigilance and Anti corruption Bureau had continued with the investigation. On collection of the materials, F.I.R had been lodged under Sections 13(2) and 13(1)(c) of the Prevention of Corruption Act, 1984, and also under Sections 109, 465, 467, 468, 471, 477A, 201 and 120B of IPC.

2. On receiving the information from Vigilance

and Anti Corruption Bureau, the first respondent, the Joint Registrar of Co-operative Societies, through his communication dated 28.11.2006, had addressed the second respondent to place the writ petitioners under suspension, as their continuance in service would affect the further investigation of the criminal case.

3. Basing on the communication of the first respondent, the second respondent issued a show cause notice to the writ petitioners, directing them to show cause why they should not be suspended from service. Accordingly, both the writ petitioners had filed their replies. The same are thus under consideration of the second respondent. While so, the petitioners came up before this Court, praying that, as a domestic enquiry had already been completed and penalties imposed, according to the Rules, there should not be a further suspension, which would affect their very existence and their family members also would be put into difficulties.

4. The learned counsel for the writ petitioners

submitted, relying on **Muhammed Kutty v. Secretary to Government (2002 (1) KLT 880)**, to emphasis the point that the Joint Registrar has got no authority to direct the second respondent, bank, to suspend their employees. The counsel also relied on **Gopinathan Nair v. Registrar of Co-operative Societies (1978 KLT 392)** to argue that, discretion has to be exercised by an authority invested with such discretion and law has to be exercised uninfluenced by the directions of any extraneous authority. The counsel, therefore, submitted that the first respondent had got no authority to direct the second respondent to suspend the writ petitioners.

5. The learned Government Pleader, on the other hand, submits relying on **State of Rajasthan v. B.K.Meena and Others (1996 (6) SCC 417)** to argue that "disciplinary proceedings are meant not really to punish the guilty, but to keep the administrative machinery unsullied by getting rid of bad elements". On

the other hand, criminal proceedings are initiated to see whether the accused had committed any offence as alleged against them. The Government Pleader also placed reliance on **Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya (1997 (2) SCC 699)** to reiterate the point that the purpose of departmental enquiry and of prosecution are too different and distinct aspects. The criminal prosecution is lodged for an offence, for the violation of a duty, which the offender owes to the society. Departmental enquiry is to maintain discipline in the service and efficiency of public service. Both the proceedings are distinct and different.

6. The above legal principles clearly show that there can be criminal proceedings as well as departmental enquiries. In the case at hand, the plea of the writ petitioners is that the allegations made against them had been found proved and, therefore, the punishments, as prescribed under the Rules, had been

impose on them. Hence, the suspension at the instance of the first respondent, need not be again imposed.

7. As discussed above, the show cause notice had been issued and the replies furnished by both the writ petitioners. The final decision has to come from the second respondent, the Co-operative bank.

8. In the above legal and factual situation, the second respondent shall take an independent decision, uninfluenced by the directions of the first respondent to suspend them. On the suspension of the writ petitioners, this Court, at this stage, need not interfere with the show cause notice issued by the second respondent or the replies furnished by the writ petitioners. It is for the disciplinary authority, the managing committee of the second respondent, to take appropriate decision, in view of the legal principles discussed above. Therefore, I find no further orders are necessary to be given through this writ petition.

9. However, I make it clear that the writ

petitioners will be free to redress their grievance, if their interests are adversely affected, in the order that may be passed by the second respondent.

The writ petition is closed as above.

J.M.JAMES
JUDGE

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